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1943

File No. O Rent Restriction 143.

A **BRANCH**

Subject:—

Opinion under the Bombay Rent Restriction Act 1939

R&E

File No. O Rent Restriction 143

Gen. 194 e.

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C O N T E N T S.

Legal Department File No.O.Rent Restriction/1943.

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NICB 297

P.H.G. 20/7

Submitted.

2. The premises near the Clare Convent owned by H.H. Agakhan are occupied by tenants. But the landlord wants to evict the tenants and give the premises for the school on a concession rent. But he cannot do so as the tenants cannot be evicted unde secs.11 and 12 of the Bombay rent Restriction Act,1939. The question for R.L.A's consideration is whether the premises belonging to H.H.Agakhan can be exempted under the proviso to sec.2 of the Act.

Reply may be:-

Papers are seen and returned.

The view taken by the joint Secretary D is correct.

Sd/R.T.K.

A.L.R. I agree
H.S.H. 8/2/

R.L.A. Sd/P.N.M. 5/2/

U.R. to G.D.,No.999 dated 9th February 1943.

EKH.11/7/

Office of the R.L.A.

The Bombay Rent Restriction Act,1939 and the Bombay Rent Restriction Order, 1942 apply to premises whose standard rents fall within certain limits. In the present case it appears from the meagre statement of facts that the rents of the premises in question do not come within the definition of standard rents in either the Act or the order. Neither the Act nor the Order the has therefore any application and the premises seem to escape control. Since the order itself has no application there can be no question of any difficulty arising in giving effect to it and therefore the Rent Controller would not be competent to interfere anddetermine the rent under section 11 (b) of the Order. Such cases are however very rare and no action seems called for unless they become common in which event it may be necessary to fill the lacuna by suitably amending the Order.

Id/-

P.H.M.
26/5/

Remembrancer of Legal Affairs.

U.R. to G.D.No.3834,dated the 27th May 1943.

EKH.11/7/

Office of the R.L.A.

It appears that the General Secretary of the Bombay Tenants Association has complained to Government that the landlords have increased rents in some cases in spite of the provisions of the Bombay Rent Restriction Act,1939, and the Bombay Rent Restriction Order, 1942. These cases can be classified under the following five categories.:-

(a) Cases where rent of tenaments was inclusive of rent for electric light for which a separate rent is now demanded.

(b) Cases where a separate rent for electric consumption per unit was charged by the landlord and where an increase in this rent is now demanded.

(c) Cases there the tenant was paying bills for electric lights direct to the company according to the units of electricity consumed by him; but his sub-meter is now removed andis required to pay to the landlord for electricity for each light.

(d) Cases where rent is inclusive of electric light and served by a general meter in the name of the landlord which is now switched off earlier in the night thus reducing the hours of supply of electricity.

(e) Cases where rent was inclusive of rent for the use of lift which is discontinued.

The question for the consideration of the R.L.A. is whether in cases of all or any of the aforesaid categories the provisions of the Bombay Rent Restriction Act,1939 and the Bombay Rent Restriction Order,1942,have been contravened.

2. Sub-section (1) of section 7 of the Bombay Rent Restriction Act, 1939,provides that where as a result of any alteration in the terms of the tenancy, the terms on which any premises are held areon the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased for the purposes of this Act, whether the sum payable as rent is increased or not. A similar provision is contained in clause 5(1) of the Bombay Rent Restriction Order,1943; In

In.....

In cases failing under categories (a),(b) (d) and (e) the terms of tenancy appear to have been altered unfavourably to tenants and consequently the provisions of the Bombay Rent Restriction Act and the Bombay Rent Restriction Order would be operative. Much of course would depend on the terms of each particular tenancy. In cases under the category (c), it is not clear whether by such alteration in terms of tenancy the tenants are in any way adversely affected either by any increase or rent or by deprivationof any rights or amenities.

3. Although there appear in some of the above cases to have been increased in rent within the meaning of increase as used in the Act or Order and although the provisions of the Act or Order would therefore be operative, thereappears to be no question of a contravention of the Act 6r Order. Neither the Act nor the Order prohibits the land lord from increading the rent. They merely provide that if he does increase the rent, the increase will be irrecoverable. Consequential provisions enable the tenant to refrain from paying the increase or enable him to recover it, if paid. Since there is no prohibition against increase, increase will not constitute a contravention. Therefore it is primarily a case for the tenant to take action, not Govt.

4. Although in some of the cases there have been alterations in the tenancies which would amount to increase in the rent within the meaning of the Act or Order, it is difficult to see how the increase is to be estimated in terms of money,e.g. how is the stoppage of the lift to be estimated in terms of money and who is to do the estimating? In such cases the provisions of the Act or Order cannot easily operate.

5. Practices such as cutting the electric connection are clearly objectionable. They would yield a civil remedy, but G.D.might consider whether it would be advisable to aban such practices under the Order.

Id/- P.N.M.25/9

Remembrancer of Legal Affairs.

U.R. to G.D.No.6495,dated the 27th September 1943.

EKH.11/7/

Office of the R.L.A.

It appears that a portion of the Central Government Medical Stores Department at Bellasis Road, Bombay, was leased to Messrs. Eyres & Co. at a monthly rent of Rs.307/-. The lease expired on 31st March 1943, but as the Director General, I.M. stores decided to charge a rent of Rs.534/- from 1st April 1943 the tenant company has applied to the Rent Controller to intervene and fix the standard rent. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the Bombay Rent Restriction Order 1942, applies to the Crown premises; if so,

(2) Whether the Rent Controller has jurisdiction to determin the rent chargeable from 1st April 1943 to 15th June 1943 to 15th June 1943 during which period the Bombay Rent Restriction order was not applicable to business premises;

(3) Whether Government would be entitled to increase at least the rent of the equipment of not of the premises.

2. It is a rule of constuction that "where there are different statutes in pari materia though made at different times or even expired and not referring to each other, they shall be taken and constmued together as one system and as explanatory of each other". (R.v.Loxdale 1 BWR 447). "Where a Colonial legislature has passed an act in the same terms as an Imperial statute and i the latter has been authoritatively construed by a Court of Appeal in England, such construction should be adopted by the Court of the Colony". (Trimbbe v.Hill (1879) 5 App. cas.342; Maxwell p.31;). The English Rent Restrictions Acts of 1920 and 1923 (10 & 11 Geo. 5 and 13 and 14 Geo. 5) and the Bombay Rent-Restriction Order, 1942 are in pari materia. The provisio of the English Rent Restrictions Acts of 1920 and 1923 have been held to be not binding on the Crown. See clark v.Downs (1931) 145 LT29; Wirral Estates Ltd.V.Shaw, (1932) 2 K.B. 247). In Clark v.Downes. Lord Hanworth M.R. observed:-

"If.....

"If the matter was not in any way complicated by the Rent Restrictions Acts it is clear that the plaintiff would be entitled to recover possession of the premises but it was argued before the county court judge, that, having regard to the Rent Restrictions Acts, the plaintiff is not entitled to recover possession, on the ground that these are premises of a rental value to which the Act applies and that the tenant is entitled to rely upon the restrictions imposed upon the landlord to recover/ possession. The point is a short one, and before the county court judge the argument was presented on the basis that the Crown was not bound by these Rent Restrictions Acts, and we have dealt with it in this court upon that assumption. The assumption is made because it is presumed that the Legislature does not intend to deprive the Crown of any right ro property unless it expresses its intention to do so in explicit terms or makes the inference irresistibl and so where the language of a statute is general and in its general sense would not deprive the Crown of any right or property the ordinary rule is that the Crown is not so deprived. If and so far as any internal evidence is to be found in the Acts, section 12, sub-section (10) ~~xxxxxxxxxxxxxx~~ of the Act of 1920 points in the direction of the crown not being bound."

The crown has not been expressly by by necessary implication mentioned in the Bombay Rent Restriction Order, 1942, the language of which is general. The principle laid down in Clark v.Downe must therefore apply and the first question referred to the R.L.A. for consideration must be answered in the negative. The other two questions do not sur vive.

Id/-
P.N.M. 6/11/

Remembrancer of Legal Affairs.

U.R. to G.D.No.8213, dated the 6th November 1943.

SRM.11/7/

Office of the R.L.A.

Since the Ramchandra Madhavram Bhatt Hostel building vests in Government the Bombay Rent Restriction Act, 1939, will not apply. (See R.L.A's opinion No.8213 dated 6.11.43

Sd/P.M.M.

Remembrancer of Legal Affairs.

U.R. to G.D.No.8938, dated the 3rd December 1943.

EKM.11/7/